

## The Telecommunications Modernization Act of 2011: Wisconsin repaves the information superhighway

In the first major revision of the statutes regulating telecommunications since 1994, the Wisconsin Legislature has further deregulated the industry in an effort to adapt to the realities of modern commerce. Former PSC general counsel and administrative law judge Ed Marion provides an overview of the Act and the regulatory proceedings to implement its provisions.



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June 15, 2011 – The era of telecommunications deregulation began in 1984, with the breakup of the Bell System monopoly as part of the settlement of the federal government's antitrust suit against American Telephone & Telegraph Co. Deregulation continued (at the state level) with the enactment of 1993 Wisconsin Act 496, the Information Superhighway Act, and (at the federal level) with the Telecommunications Act of 1996. On May 24, 2011, Gov. Walker signed 2011 Special Session Senate Bill 13, creating the Telecommunications Modernization Act of 2011 (Act 22), which, according to the governor, "will update Wisconsin's regulation of the telephone industry for the broadband age."<sup>1</sup>

This article provides a brief overview of the Act and a preview of regulatory proceedings to implement its provisions.

### Background

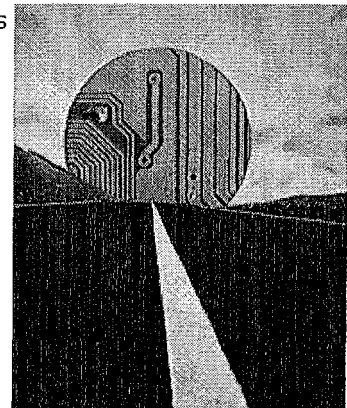
"The monopoly days of the Ma Bell of either our youth or of our institutional memory are gone."<sup>2</sup> So wrote the court of appeals in 2003. This observation – quaint even eight years ago – is even more of an understatement today. Ma Bell – the American Telephone & Telegraph Co. (AT&T) – had 22 "children" in 1983, when the court terminated her parental rights to Wisconsin Telephone Co. and the other Bell Operating Companies.<sup>3</sup>

Seven new families (including Ameritech, the new parent of Wisconsin Telephone Co., later to be renamed Wisconsin Bell Inc.), the Regional Bell Operating Companies (RBOCs), replaced the old AT&T as the dominant providers of local exchange service. The RBOCs retained AT&T's retail market dominance until the passage and implementation of the federal Telecommunications Act of 1996. This landmark legislation required telecommunications carriers to interconnect with each other so as to foster competition in local exchange service. It also enabled the RBOCs to re-enter the market for long distance (a right lost in the divestiture decree).<sup>4</sup>

At the state level, the Information Superhighway Act partially deregulated the telecommunications industry by introducing new alternatives to the traditional rate-of-return form of regulation. This led to increased competition and substantially decreased administrative regulation.<sup>5</sup>

### Act 22: The Telecommunications Modernization Act of 2011

Dramatic technological developments and the attendant regulatory challenges led to a call for significant additional deregulation, both in Wisconsin and elsewhere throughout the United States.<sup>6</sup> Wisconsin answered the call with Gov. Walker's signing of 2011 Special Session Senate Bill 13, creating Act 22.<sup>7</sup>



In general, Act 22 makes the following changes<sup>8</sup>:

- eliminates price regulation (an innovation of the Telecommunications Superhighway Act) for AT&T Wisconsin and Frontier North (formerly Verizon);
- revises consumer complaint processes;
- deregulates intrastate access charges;
- eliminates alternative regulation plans (a creation of the Telecommunications Superhighway Act);
- uniformly regulates telecommunications companies;
- explicitly exempts voice over Internet protocol (VoIP) service from regulation; and
- eliminates many miscellaneous Public Service Commission (PSC) oversight activities.

### Administrative implementation of Act 22

Even before further deregulation was proposed, the PSC began to look into its rules and regulations governing telecommunications providers to: "explor[e] what regulations are needed in an increasingly competitive market, and how they can be designed to assure consumer protection, competitive fairness, and adequate service, while not imposing unfair or unreasonably burdensome requirements on various providers."<sup>9</sup> The PSC solicited comments from stakeholders and held a technical conference. Recently, however, the PSC decided to close the investigation without any substantive decisions.<sup>10</sup> Among several reasons given to close the investigation, the PSC cited the proposed legislative initiatives that subsequently led to Act 22.

On June 2, 2011, just days after Gov. Walker signed Act 22, the PSC opened a new docket to begin the process of implementing the Act.<sup>11</sup> In this docket, the PSC will consider closing several pending proceedings that may have been mooted by the passage of Act 22. These proceedings include the following:

an investigation into VoIP;  
an investigation into intrastate access charges;  
rules related to the operation of incumbent local exchange carriers and affiliated entities; and  
eligible telecommunications carrier designation for wireless providers.<sup>12</sup>

### Conclusion

Although Act 22 is being widely hailed as a positive development, this opinion is not unanimous. Concerns exist regarding the availability of basic telephone service at affordable prices, service quality, and reduced regulatory oversight.<sup>13</sup> What is certain is that Act 22 has repaved (for better or worse) Wisconsin's telecommunications superhighway.

### About the author

Edward S. Marion, U.W. 1974, now in private practice, was the general counsel and administrative law judge at the Public Service Commission of Wisconsin from 1998 through 2008. He is the current chair of the State Bar's Energy and Telecommunications Law Section.

### Endnotes

<sup>1</sup> *State Legislature Passes Telecom Deregulation*, BizTimes Daily, May 12, 2011.

<sup>2</sup> *Wisconsin Bell Inc. v. Public Service Comm'n of Wis.*, 2003 WI App 193, ¶ 2, 267 Wis. 2d 193, 670 N.W.2d 97.

<sup>3</sup> *United States v. American Tel. & Tel. Co.*, 552 F. Supp. 131, 139 (D.D.C. 1983).

<sup>4</sup> See generally *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, 371-73 (1999).

<sup>5</sup> *Investigation into the Level of Regulation for Telecommunications Providers*, Docket No. 05-TI-1777 (Notice of Investigation, Feb. 7, 2008), document no. 89368.

<sup>6</sup> E.g., Brian T. Doudna & Scott T. VanderSanden, *Wisconsin Economy and Jobs Will Benefit From Telecom Modernization Bill*, La Crosse Tribune, April 8, 2011.

<sup>7</sup> *Business Groups Hall Telecom Modernization Act*, BizTimes Daily, May 24, 2011.

<sup>8</sup> For a comprehensive treatment of all of the provisions of the Act, see David L. Lovell, *Regulation of Telecommunications Services*, Wisconsin Legislative Council Information Memorandum 2011-7, June 2, 2011.

<sup>9</sup> *Id.*, Notice of Investigation, PSC document no. 89368. *Investigation into the Level of Regulation for Telecommunication Providers* (Docket No. 05-TI-177) (opened Feb. 7, 2008).

<sup>10</sup> Order to Close the Investigation, February 4, 2011, Document No. 144463.

<sup>11</sup> *Administrative Matters Related to Implementation of 2011 Wisconsin Act 22*, Docket No. 05-GF-209, Document No. 149018.

<sup>12</sup> *Id.*

<sup>13</sup> E.g., Editorial, *Telecommunications Law Must Prove Itself*, Appleton Post Crescent, May 25, 2011.

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